

APPEAL NO. 040373
FILED APRIL 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 21, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease, with a date of injury of _____, and that she has not had disability. The claimant appeals the hearing officer's decision, contending that the evidence proves that she sustained a repetitive trauma injury and that the testimony of the respondent's (carrier) vocational consultant should not have been considered. The carrier asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

The claimant contended that she sustained an occupational disease in the form of a repetitive trauma injury from performing her work activities as a customer service representative for the employer and that she had disability as a result of the injury. The claimant had the burden to prove that she sustained a repetitive trauma injury as defined by Section 401.011(36) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented regarding the claimant's work activities and whether her work activities caused her to sustain a repetitive trauma injury to her right hand, arm, and shoulder as claimed by the claimant. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Since the claimant did not object to the admission of the carrier's vocational consultant's testimony at the CCH, she did not preserve any complaint regarding the admission of that testimony for review on appeal. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a compensable occupational disease is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The hearing officer did not err in determining that the claimant has not had disability because, without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica L. Ruberto
Appeals Judge